

# ATTACHMENT E

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION**

BellSouth Telecommunications, Inc.  
d/b/a AT&T North Carolina,

Plaintiff,

v.

Edward S. Finley, Jr., Chairman,  
Lorinzo L. Joyner, Commissioner, and  
William T. Culpepper, III, Commissioner,  
in their official capacities and not as individuals,

and

Intrado Communications Inc.,

Defendants.

Case No. 5:09-cv-00517-BR

Judge Britt

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**AT&T NORTH CAROLINA'S  
MOTION FOR SUMMARY JUDGMENT**

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Pursuant to Federal Rule of Civil Procedure 56, BellSouth Telecommunications, Inc. d/b/a/ AT&T North Carolina ("AT&T") respectfully moves for summary judgment in its challenge to the decision of the State of North Carolina Utilities Commission ("the Commission") in the arbitration of an "interconnection agreement" between Intrado Communications Inc. ("Intrado") and AT&T under the federal Telecommunications Act of 1996 ("1996 Act" or "Act") (codified at various sections of 47 U.S.C.).<sup>1</sup> In support of this motion, AT&T states as follows:

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<sup>1</sup> The Recommended Arbitration Order ("RAO") is Exhibit A to AT&T's Complaint and Record Index No. 56. The Commission's Order Ruling on Objections and Requiring the Filing of a Composite Agreement ("Order") is Exhibit

1. Because this is a challenge to an arbitration decision of a state commission under Section 252(e)(6) of the 1996 Act, 47 U.S.C. § 252(e)(6), it is in effect an appeal, and AT&T North Carolina is the position of an appellant. Accordingly, the case is being submitted by briefing on the merits. A full evidentiary record was already developed through testimony and cross-examination during the Commission proceeding, after which the Commission issued the decision now on review.

2. AT&T is an "incumbent" local exchange carrier ("ILEC") under the 1996 Act. As explained in AT&T's attached brief in support of summary judgment, Sections 251(c) and 252 of the 1996 Act allows a carrier that seeks to "interconnect" its network with an ILEC's network to request to negotiate and, if necessary, arbitrate an "interconnection agreement" with the ILEC (47 U.S.C. §§ 251(c), 252(a)-(b)), but only if the requesting carrier provides either "telephone exchange service" or "exchange access" as defined by federal law (*Id.* § 251(c)(2)(A); 47 C.F.R. § 51.305(b)). The only issue in this case is whether the Commission was correct in holding that Intrado's 911 service qualifies as "telephone exchange service" under federal law, and therefore that Intrado is entitled to interconnection with AT&T under Section 251(c) of the Act. It was not. Intrado's service fails to meet the most fundamental requirements of a "telephone exchange service," including that it provide "intercommunication," *i.e.*, that the subscriber be able to "make calls" to "all subscribers," and that it provide call-origination capability *Advanced Services Order*, ¶¶ 20, 23-24, n.61;<sup>2</sup> *Directory Listing Order*, ¶¶ 17, 21.<sup>3</sup>

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B to the Amended Complaint and Record Index No. 67. They are provided here as Attachments 1 and 2 to AT&T's Brief in Support of Motion for Summary Judgment.

<sup>2</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 (1999) ("*Advanced Services Order*").

<sup>3</sup> *Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd. 2736 (2001) ("*Directory Listing Order*").

3. For these reasons, and as more fully explained in AT&T's brief in support of summary judgment, the Court should grant judgment in favor of AT&T and, therefore, the entire Commission decision should be vacated.

This 26<sup>th</sup> day of April, 2010.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **AT&T NORTH CAROLINA'S MOTION FOR SUMMARY JUDGMENT** using the CM/ECF system, which will send notification of the filing to all counsel of record who are registered on the CM/ECF system.

This 26<sup>th</sup> day of April, 2010.

/s/ Eric H. Cottrell  
Eric H. Cottrell

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA  
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BellSouth Telecommunications, Inc.  
d/b/a AT&T North Carolina,

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Edward S. Finley, Jr., Chairman,  
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**AT&T NORTH CAROLINA'S BRIEF IN SUPPORT  
OF MOTION FOR SUMMARY JUDGMENT**

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BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina (“AT&T”) respectfully submits its initial brief in support of its motion for summary judgment. AT&T is challenging a decision of the State of North Carolina Utilities Commission (“Commission”) in the arbitration of an “interconnection agreement” between Intrado Communications Inc. (“Intrado”) and AT&T under the federal Telecommunications Act of 1996 (“1996 Act” or “Act”) (codified at various sections of 47 U.S.C.).<sup>1</sup> Because this is a challenge to an arbitration decision of a state commission under Section 252(e)(6) of the 1996 Act, 47 U.S.C. § 252(e)(6), it is in effect an appeal, and AT&T North Carolina is the appellant. The only issue in this case is whether the Commission was correct in holding that Intrado’s 911 service qualifies as “telephone exchange service” under federal law. It was not.

### **INTRODUCTION**

Congress passed the 1996 Act to promote competition, particularly in the market for local telephone service. That market previously had been served by “incumbent” local exchange carriers (“incumbent LECs” or “ILECs”), like AT&T, that had state-granted monopolies to provide local service for a defined area. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371-73 (1998). To open the market, the Act imposes special duties on ILECs. In particular, Sections 251(c) and 252 allow carriers seeking to “interconnect” their network with the ILEC’s network to negotiate and, if necessary, arbitrate an “interconnection agreement” with the ILEC. 47 U.S.C. §§ 251(c), 252(a)-(b). Seeking to take advantage of those special duties, Intrado requested interconnection to AT&T under Section 251(c)(2). To be eligible to compel interconnection under Section 251(c)(2), however, the requesting carrier must provide either

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<sup>1</sup> The Recommended Arbitration Order (“RAO”) is Exhibit A to AT&T’s Complaint and Record Index No. 56. The Commission’s Order Ruling on Objections and Requiring the Filing of a Composite Agreement (“Order”) is Exhibit B to the Amended Complaint and Record Index No. 67. They are provided here as Attachments 1 and 2.



“telephone exchange service” or “exchange access” as defined by federal law. *Id.* § 251(c)(2)(A); 47 C.F.R. § 51.305(b).

Whether a requesting carrier’s service meets this test has virtually never been an issue, because carriers that have interconnected to AT&T under Section 251(c)(2) have provided typical local exchange service to typical residential or business end-users. Intrado, however, does not. Instead, it seeks to provide a specialized service limited to 911 emergency calls. Its customers will not be 911 callers, but rather those who answer 911 calls, referred to as Public Safety Answering Points (“PSAPs”).

When Intrado provides its service, it is not responsible for the provision of local exchange service to its customers, and, in fact, requires its customers to agree (as a condition to obtaining service) to place all outgoing calls using local exchange service provided by another carrier. *Infra*, Part I.B. Moreover, to qualify as “telephone exchange service” under federal law, a service must permit the customer to “originate,” *i.e.*, “make calls” to all subscribers within a geographic area.<sup>2</sup> 47 U.S.C. § 153(47). Intrado admitted that its service does not let its PSAP customers originate telephone calls. Rather, the 911 callers (which are not Intrado’s customers) originate calls by using local exchange service bought from another carrier, and Intrado’s service at most offers its PSAP customers the ability to receive such 911 calls and transfer them to or conference in another PSAP.

For these reasons, Intrado therefore does not provide “telephone exchange service.” The state commissions in Florida and Illinois recognized this and dismissed Intrado’s petitions for arbitration on that ground.<sup>3</sup> The North Carolina Commission, however, erroneously concluded

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<sup>2</sup> Intrado did not contend that its service was “exchange access.” Att. 2 (Order) at 7-8; Att. 1 (RAO) at 8-9.

<sup>3</sup> Arbitration Decision, *Intrado, Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934 as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company, Ill.* Commerce Comm’n, Docket No. 08-0545, 2009 WL 2589163, at \*5-\*11, \*14-\*16 (Mar. 17, 2009) (“*Illinois*

that the ability to transfer a call or conference in another PSAP is the same as originating a call. Att. 2, Order at 9-10; Att. 1, RAO at 9-14. It is not, as the record and Federal Communications Commission ("FCC") decisions show. *See infra*, Parts I.B, I.C.1, I.C.2.

### **BACKGROUND**

Intrado seeks to provide what it calls "Intelligent Emergency Network" ("IEN") service, which is related only to 911 emergency telephone calls. Att. 5 (Intrado's Petition for Arbitration) (Record Index No. 1) at 3-7; Att. 2 (Order) at 7-8; Att. 1 (RAO) at 9. 911 calls are directed to PSAPs, which most people think of as the 911 operator. Att. 5 at 3-7. Each PSAP serves a defined geographic territory. *Id.* These PSAPs need to obtain service from a 911 system service provider to have the 911 calls directed and delivered to them. *Id.* AT&T has traditionally served as the 911 system service provider for PSAPs that handle 911 calls from end-user customers in AT&T's service territory. *Id.* Intrado wants to replace AT&T as the 911 system service provider for those PSAPs. *Id.* To do that, Intrado needs to interconnect with AT&T so that it can receive 911 calls originated by AT&T's customers and then deliver them to Intrado's PSAP customers. *Id.*

On December 21, 2007, Intrado filed a Petition for Arbitration of certain rates, terms, and conditions in an interconnection agreement with AT&T pursuant to Section 252(b) of the 1996 Act ("Petition"). Att. 5 (Record Index No. 1). AT&T later filed its Response. Att. 6 (Record Index. No. 5). In its Petition, Intrado sought interconnection with AT&T under Section 251(c)(2) of the Act, based on AT&T's status as an ILEC. Att. 5 at 7.

To be eligible for interconnection to an ILEC under Section 251(c)(2), the requesting carrier must provide either "telephone exchange service" or "exchange access" as defined by

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*Order*"); Final Order, *Petition by Intrado Communications, Inc. for Arbitration*, Fla. Pub. Serv. Comm'n Docket No. 070736-TP, 2008 WL 5381467, at \*3-\*4 (Dec. 3, 2008) ("*Florida Order*"). The *Illinois Order* and *Florida Order* are provided as attachments 3 and 4.

federal law. 47 U.S.C. § 251(c)(2)(A); 47 C.F.R. § 51.305(a)(1); *Implementation of the Local Competition Provisions in the Federal Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 191 (1999) (subsequent history omitted) (“*First Report and Order*”). AT&T argued that Intrado’s service did not qualify as “telephone exchange service” or “exchange access,” and therefore that Intrado was not entitled to interconnect under Section 251(c)(2) or to compel arbitration of an interconnection agreement under Section 252(b). Att. 7 (Rebuttal Testimony of Patricia H. Pellerin) (Record Index No. 23) at 5. Nevertheless, AT&T stated that it was willing to interconnect with Intrado, thus giving Intrado everything it needed to provide its competing service, under a “commercial agreement,” which is not subject to arbitration. *Id.* at 9. Whether Intrado’s service qualified as “telephone exchange service” thus became the threshold issue in the arbitration, because, if it did not, all other issues in the proceeding would become moot.

The Commission found that Intrado’s 911 service fell within the federal definition of “telephone exchange service” and that Intrado therefore was entitled to interconnect to AT&T under Section 251(c)(2) and to arbitrate an interconnection agreement under Section 252(b). Att. 2 (Order) at 9-10; Att. 1 (RAO) at 9-14.<sup>4</sup>

### **STANDARD OF REVIEW**

The issues here involve the application of law to largely undisputed facts, and are therefore legal. The Commission’s legal determinations are reviewed *de novo* and are entitled to no deference. *BellSouth Telecomms., Inc. v. Sanford*, 494 F.3d 439, 447 (4<sup>th</sup> Cir. 2007). The Commission’s determinations also may be reversed if they are arbitrary and capricious. *GTE South, Inc. v. Morrison*, 199 F.3d 733, n.5 (4<sup>th</sup> Cir. 1999).

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<sup>4</sup> The RAO was issued first. After further briefing, the Commission generally adopted the RAO and added further explanation in the Order.

## ARGUMENT

### **I. THE COMMISSION'S DETERMINATION THAT INTRADO'S SERVICE QUALIFIES AS "TELEPHONE EXCHANGE SERVICE" VIOLATES FEDERAL LAW AND IS ARBITRARY AND CAPRICIOUS**

#### **A. Congress's Definition of "Telephone Exchange Service"**

Congress defines "telephone exchange service" as follows (47 U.S.C. § 153(47)):

(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

The FCC's *Advanced Services Order*<sup>5</sup> and *Directory Listing Order*<sup>6</sup> explain how to apply the elements of this definition. In those orders, the FCC explained that part A and part B of the definition have many of the same requirements because part B was created only to "ensure that the definition of telephone exchange service was not limited to traditional voice telephony, but included non-traditional means of communications within a local calling area." *Directory Listing Order*, ¶ 21. The FCC further explained that services under part B of the definition must be "comparable" to services under part A, *i.e.*, they must "retain [] key characteristics and qualities." *Advanced Services Order*, ¶¶ 29-30; *Directory Listing Order*, ¶¶ 20-21. The FCC then defined and analyzed the "key characteristics and qualities" that all "telephone exchange services" must possess, which include the following:

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<sup>5</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 (1999) ("*Advanced Services Order*").

<sup>6</sup> *Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd. 2736 (2001) ("*Directory Listing Order*").

**Intercommunicating.** The FCC explained that the “intercommunicating” requirement (explicit in part A) applies under both parts of the definition of “telephone exchange service”<sup>7</sup> – a fact the Commission itself acknowledges (Att. 1 (RAO) at 11). An “intercommunicating” service is defined as one that permits a “community of interconnected customers *to make calls to one another,*” i.e., to “*all subscribers within a geographic area.*” *Advanced Services Order*, ¶¶ 20, 23 (emphasis added); *Directory Listing Order*, ¶ 17 (a telephone exchange service “must permit ‘intercommunication’ *among subscribers within the equivalent of a local exchange area*... We believe that the call-completion service offered by many competing DA providers constitutes intercommunications because it permits *a community of interconnected customers to make calls to one another* in the manner prescribed by the statute.”) (emphasis added); *id.* ¶ 21 (“Call completion offered by a DA provider . . . ‘allows a local caller at his or her request to connect to another local telephone subscriber’ thereby permitting *a community of interconnected customers to make calls to one another.*”) (emphasis added); *Advanced Services Order*, ¶ 24 (service meets the “intercommunicating” requirement where the customer “may rearrange the service to communicate with *any other subscriber* located on that network.”) (emphasis added); *id.*, n.61 (service meets the “intercommunicating” requirement where it allows subscribers “to communicate with *any other subscriber*”) (emphasis added).

The FCC also made clear that because an “intercommunicating” service must enable the customer to make calls to “all subscribers” (i.e., “any other subscriber”) on the network, the requirement would not be met if the service only permitted a designated connection between one or more points. *Advanced Services Order*, ¶¶ 20, 23-26, n.61; *Directory Listing Order*, ¶¶

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<sup>7</sup> *Advanced Services Order*, ¶ 30 (The FCC has “reject[ed] the argument that subparagraph (B) eliminates the requirement that telephone exchange service permit ‘intercommunication’ among subscribers within a local exchange area” because “[a]s prior Commission precedent indicates, a key component of telephone exchange service is ‘intercommunication’ among subscribers within a local exchange area.”).

17, 21-22. Thus, intercommunication does not exist where the subscriber either cannot “make calls” or can only make calls to a few designated points. *Advanced Services Order*, ¶¶ 20, 23-26, n.61; *Directory Listing Order*, ¶¶ 17, 21-22.

**Call Origination.** The call-origination requirement (explicit in part B) refers to the ability of a subscriber to initiate or make a call and applies under both parts of the definition.<sup>8</sup> With respect to call origination, the FCC emphasized that subscribers must have control over the service by being able to choose with whom, from a multiplicity of customers, they will connect. *Directory Listing Order*, ¶¶ 17-18, 20-21; *Advanced Services Order*, ¶¶ 24-25.

**Exchange Area.** The definition of “telephone exchange service” also requires that the service be provided “within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area” and be “of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.” The FCC explained that the service must operate within, and give the subscriber the ability to communicate within, a geographic area that is *equivalent* to a local exchange area. *Advanced Services Order*, ¶¶ 15, 27, 29; *Directory Listing Order*, ¶¶ 17, 19. It is not enough that the service connect the subscriber to a few designated points. *Advanced Services Order*, ¶¶ 23-26, n.61; *Directory Listing Order*, ¶¶ 17, 21-22.

## **B. The Capabilities of Intrado’s Service**

The Commission correctly noted (Att. 1 (RAO) at 9) that there was no substantial disagreement among the parties concerning the capabilities of Intrado’s service. Intrado was not required to file a tariff for the provision of its service to PSAPs in North Carolina, but it did file

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<sup>8</sup> Because the “intercommunicating” requirement explicit in part A includes a call-origination component and applies under both parts of the definition, *Advanced Services Order*, ¶ 30, the call-origination requirement explicit in part B necessarily applies under both parts of the definition.

tariffs for that service in other states, including Florida<sup>9</sup> and Ohio. Intrado does not claim that its IEN service in North Carolina is any different than its IEN service in these other states. Att. 7 at n.12. Those tariffs are a primary source explaining the capabilities of Intrado's service. Att. 7 at n.12

Intrado's Tariff explicitly states that Intrado "is not responsible for the provision of local exchange service to its Customers." Att. 9(a), Ohio Tariff, § 1, Original Page 5.<sup>10</sup> It further emphasizes that IEN service "is not intended to replace the local telephone service of the various public safety agencies which may participate in the use of this service." Att. 8, Florida Tariff, § 5.2.3, Original Sheet 49; Att. 9(b), Ohio Tariff, § 5.2.3, 1<sup>st</sup> Revised Page 8.<sup>11</sup> In fact, as a condition to obtaining Intrado's service, Intrado's PSAP customers must agree to place all outgoing calls using service provided by another carrier: "The Customer must furnish [Intrado] its agreement to . . . subscribe to local exchange service at the PSAP location for administrative purposes, for placing outgoing calls, and for receiving other calls." Att. 8, Florida Tariff, § 5.2.9.D, Original Sheet 50; Att. 9(b), Ohio Tariff, § 5.2.9.D, Section 5, 1<sup>st</sup> Revised Page 9.<sup>12</sup>

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<sup>9</sup> Intrado's Florida Tariff was included as Exhibit PHP-1 to the Rebuttal Testimony of AT&T witness Patricia Pellerin (Record Index No. 23), and is provided here as Attachment 8.

<sup>10</sup> AT&T requests that the court take judicial notice of Intrado's Ohio Tariff. The original version of Intrado's Ohio tariff – which was filed with the Ohio commission and, at the time of drafting this brief, was available on Intrado's website at [http://www.tariffs.net/tariffs/10010134bv/tempOH\\_tariff\\_as\\_filed\\_2-7-08\\_CURRENT.pdf](http://www.tariffs.net/tariffs/10010134bv/tempOH_tariff_as_filed_2-7-08_CURRENT.pdf) – contained the language that Intrado "is not responsible for the provision of local exchange service to its Customers." Intrado later revised its Ohio Tariff to delete this language, but Intrado's revised Ohio Tariff – like the Florida Tariff – still admits that Intrado does not provide telephone exchange service to its PSAP customers, as explained in the text. Intrado's original Ohio Tariff is provided here as Attachment 9(a), and its revised Ohio Tariff is provided here as Attachment 9(b). Intrado's revised Ohio Tariff is available on the Ohio commission's website at <http://www.puco.ohio.gov/emplibrary/files/docketing/tariffs/Emergency%20Service%20Telecommunications%20Carrier/Intrado%20Communications,%20Inc/PUCO%201.pdf>. The court can take judicial notice of publicly filed documents, like tariffs. *In re PEC Solutions, Inc. Securities Litigation*, 418 F.3d 379, nn.7 & 10 (4th Cir. 2005).

<sup>11</sup> The Ohio Tariff contains the same language except that it uses the phrase "as a total replacement for" instead of "to replace."

<sup>12</sup> The Ohio Tariff contains the same language except that it capitalizes "local exchange service."

Intrado's Tariff also makes clear that Intrado's service only permits PSAPs to *receive* and *transfer* incoming 911 calls – not make calls. The Tariff states that IEN services “are telecommunications services that permit a Public Safety Answering Point (PSAP) to *receive* emergency calls placed by dialing the number 9-1-1 and/or emergency calls originated by personal communications devices” (*i.e.*, devices used by end-user customers of some *other carrier's* local service), and that “support interconnection to other telecommunications service providers for the purpose of *receiving* emergency calls originated in their [*i.e.*, the *other carriers*] networks.” Att. 8, Florida Tariff, § 5.1, 2<sup>nd</sup> Revised Sheet 42 (emphasis added); Att. 9(b), Ohio Tariff, § 5.1, 1<sup>st</sup> Revised Page 1.<sup>13</sup> For example, if an AT&T customer makes a 911 call in Raleigh, it will be originated by her use of AT&T's local exchange service, and then, if Intrado serves the PSAP for that area, handed off to Intrado to deliver to the PSAP. The Tariff defines Intrado's PSAP customer as “[a] facility equipped and staffed to *receive 9-1-1 calls from* the basic emergency service provider.” Att. 8, Florida Tariff, First Revised Sheet 15 (emphasis added); Att. 9(b), Ohio Tariff, Definitions, Section 1, 1<sup>st</sup> Revised Page 6 (emphasis added).<sup>14</sup>

After Intrado's PSAP customer receives an incoming 911 call, the PSAP can transfer the incoming 911 call to another PSAP or conference in another PSAP to the existing 911 call. This capability is referred to as “hookflash.” Intrado's Tariff explains that, with hookflash, the PSAP is not originating a call, but rather is transferring a call originated by the 911 caller (which is not Intrado's PSAP customer), and that the PSAP's transfer is of an existing call. Specifically, the Tariff describes the incoming 911 calls as “emergency calls originated by personal communications devices,” *i.e.*, the telephones used by end-users subscribing to some *other*

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<sup>13</sup> The Ohio Tariff contains the same language except that it replaces “their network” with “the other providers' networks.”

<sup>14</sup> The Ohio Tariff contains the same language except that it uses the phrase “the 9-1-1 Service Provider(s)” instead of “the basic emergency service provider.”



carrier's local service. Att. 8, Florida Tariff, 5.1, 2<sup>nd</sup> Revised Sheet 42; Att. 9(b), Ohio Tariff, 5.1, Section 6, 1<sup>st</sup> Revised Page 1. And when it comes to the capability to transfer calls, Intrado uses the term "Call Transfer or Call Bridging," which it defines as "[t]he act of adding an additional party to an *existing call*" and "the creation of another leg on an existing call to include an additional party." Att. 9(b), Ohio Tariff, Definitions, Section 1, 1<sup>st</sup> Revised Page 1. Intrado's discussion of the hookflash capability repeatedly refers to Intrado's PSAP customer as the "call taker" that "transfer[s] an incoming 911 call." Att. 8, Florida Tariff, § 5.1.2.C, 2d Revised Sheet 45; Att. 9(b), Ohio Tariff, § 5.1.2.C. The Tariff further explains that the "transfer destination is determined by the caller's originating location," or by a "pre-assigned speed dial code" – not by the PSAP. *Id.* Intrado's hookflash capability is limited in that the PSAP can only transfer the 911 call to another PSAP or conference in another PSAP. Att. 8, Florida Tariff, § 5.1.2.C, 2<sup>nd</sup> Revised Sheet 45; Att. 9(b), Ohio Tariff, § 5.1.2.C, 1<sup>st</sup> Revised Page 4. The PSAP cannot transfer the call to or join in anyone else with the call. *Id.*

**C. Intrado's IEN Service Does Not Meet Congress's Definition of "Telephone Exchange Service."**

Intrado's Tariff so much as admits that its E911 service to PSAPs is not "telephone exchange service," explicitly stating that Intrado "is not responsible for the provision of local exchange service" to its PSAP customers, and requiring those PSAP customers to agree, as a condition to obtaining service, to place all outgoing calls using service provided by another carrier. *Supra*, Part I.B. Moreover, the most critical requirement of a "telephone exchange service" is that the subscriber be able to "originate" or "make calls" to "all subscribers within a geographic area." *Advanced Services Order*, ¶¶ 20, 23, 24, 25, n.61; *Directory Listing Order*, ¶¶ 17, 21-22. Intrado's subscribers, however, cannot originate *any* calls using Intrado's service, much less originate calls to all subscribers in a geographical area. *See supra*, Part I.B.

Applying the FCC's decisions on "telephone exchange service" to the capabilities of Intrado's service as described in Intrado's Tariff and by its witnesses, the Illinois Commerce Commission and Florida Public Service Commission both held that Intrado does not provide "telephone exchange service." Att. 4, *Florida Order*, 2008 WL 5381467, \*3-\*4; Att. 3, *Illinois Order*, \*5-\*11, \*14-\*16. Arbitrators in Texas reached the same conclusion.<sup>15</sup> The North Carolina Commission, however, misinterpreted and misapplied Congress's definition and reached a different, unlawful result by declining to follow FCC precedent.

### 1. Intrado's Service Does Not Provide Call Origination

Call origination is a requirement under Part A and B of the definition of "telephone exchange service." *Supra*, Part I.A; Att. 4, *Florida Order*, 2008 WL 5381467, at 5. The Commission did not independently examine whether Intrado's service allows its PSAP subscribers to originate calls; instead, it relied on a decision by the Public Utilities Commission of Ohio ("PUCO")<sup>16</sup> finding that Intrado's call-transfer capability ("hookflash") is call origination. Att. 1 (RAO) at 13. The PUCO, however, cited no authority and provided no explanation for how such capability could be origination or how a single call could be originated twice (once by the 911 caller and again by the PSAP). Instead, the PUCO stated that "the statute does not quantify 'originate,'" and because Intrado would "regard in some circumstances that

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<sup>15</sup> Order on Threshold Issue No. 1 And Granting AT&T's Motion For Summary Decision, *In the Matter of Petition of Intrado, Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, d/b/a AT&T Texas*, Pub. Util. Comm'n of Texas, Docket No. 36176, at 13-22 (Nov. 23, 2009) ("*Texas Arbitrators' Order*") (Att. 10). That case is now on rehearing to allow submission of more evidence.

<sup>16</sup> Arbitration Award, *In the Matter of the Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Case No. 07-1280-TP-ARB, 2009 Ohio PUC LEXIS 897 (Pub. Utils. Comm'n Ohio Mar. 4, 2009) ("*Ohio Arb. Award*"); Entry on Rehearing, *In the Matter of the Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Case No. 07-1280-TP-ARB, 2009 Ohio PUC LEXIS 420 (Pub. Utils. Comm'n Ohio June 17, 2009) ("*Ohio Rhg. Order*").

call transfers and conferencing involve call originating,” then it must be so. *Ohio Arb. Award* at \*36. That determination is contrary to federal law and arbitrary and capricious.

The meaning of the term “originate” is not technical and does not need to be “quantified.” Originating a call plainly means *initiating or making* a call. As the Illinois Commission correctly observed, call origination is not “a *quantitative matter*. The appropriate inquiry is qualitative – *can the customer originate a call using Intrado’s 911 service?*” Att. 3, *Illinois Order*, 2009 WL 2589163 at n.23 (emphasis in original). Moreover, the FCC has emphasized that subscribers must have control over the service by, for example, being able to choose with whom, from a multiplicity of customers, they will connect. *Directory Listing Order*, ¶¶ 17-18, 20, 21; *Advanced Services Order*, ¶¶ 24-25.

Intrado’s PSAP customer cannot initiate or make calls using Intrado’s service, much less make any choices about who it will connect with, but rather must agree (as a condition to obtaining service) to place all outgoing calls using service provided by another carrier. *Supra*, Part I.B. The PSAP customer must wait to *receive* a 911 call before it can do anything – and even then the PSAP is limited to transferring that existing 911 call, if necessary, to a predetermined point. *Supra*, Part I.B. The transfer of a 911 call that was already originated by the 911 caller is not origination. Att. 4, *Florida Order*, 2008 WL 5381647, \*3-\*4; Att. 3, *Illinois Order*, 2009 WL 2589163, \*6; Att. 10, *Texas Arbitrators’ Order* at 18-19. Calls cannot be originated twice.

The *Ohio Arbitration Award* (at \*36) based its finding that transferring a call is the same as originating a call on Intrado’s unsupported claim that “call transfers and conferencing involve call originating.” But Intrado’s own tariff admits that its transfer capability *does not* provide origination. Quite the contrary, the tariff provides that the call being transferred is originated by

the 911 caller (which is not Intrado's PSAP customer) and that the PSAP's transfer is of an existing call. *Supra*, Part I.B.

Consistent with its Tariff, Intrado's witnesses have admitted that the hookflash capability does not give its PSAP subscribers the ability to originate or make a call. For example, during the hearing, Ms. Spence-Lenss conceded that Intrado's PSAP customers cannot use Intrado's service to originate a call. Specifically, the following questions were posed, and Ms. Spence-Lenss answered as follows (Tr. Vol. 1 at 61-62):<sup>17</sup>

Q. . . . The service that will actually be provided to PSAPs, that is this aggregation of calls and delivering it to PSAP. Now isn't it true that that service can be used to transfer a call, but it can't be used to originate a call?

A. That's correct for all 911 services.

Q. . . . When the [911] customer calls the PSAP, the PSAP operator can transfer the call to another PSAP; correct?

A. Correct.

Q. But if the 911 customer doesn't call in, the PSAP can't use that service to call the [911] customer; correct?

A. That is correct. They do not use the 911 trunks to originate a call.

A. So they couldn't call the customer? They couldn't call another PSAP? They couldn't call anyone?

A. No, sir.

Based on the substantially identical testimony and arguments, the Illinois and Florida Commissions correctly concluded that Intrado's "hookflash" capability is not call "origination." As the Illinois Commission held, "hookflashing is not call origination. It is a call transfer procedure that reroutes a call originated by the person placing the inbound 911 call to the

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<sup>17</sup> Att. 11, Transcript of Testimony, Vol. 1, Docket No. P-1187, Sub 2 (Record Index No. 39).

PSAP.” Att. 3, *Illinois Order*, 2009 WL 2589163, \*6. Similarly, the Florida Commission held that:

Intrado Comm provides a service that cannot be used to originate a call. Intrado Comm witness Hicks states that Intrado Comm both originates and terminates calls from a 911/E911 caller because Intrado Comm can transfer calls from one PSAP to another PSAP. Intrado Comm witness Hicks, however, also admitted that the PSAP would not be able to call out with its service, which means that an outbound call cannot be placed unless a separate administrative local line is used. . . . Without the ability both to originate and terminate calls, Intrado Comm’s proposed services do not meet the definition of “telephone exchange service.”

Att. 4, *Florida Order*, 2008 WL 5381467, \*3-\*4.<sup>18</sup>

Given that federal law requires that, in order to qualify as “telephone exchange service,” a service must enable the subscriber to originate a call himself, and that Intrado’s witnesses and Tariff concede that Intrado’s service does *not* provide its subscribers with the ability to originate a call, the Commission’s finding that Intrado provides telephone exchange service was wrong as a matter of law.

## **2. Intrado’s Service Does Not Provide Intercommunication**

The 1996 Act does not define “intercommunication,” but the FCC has defined that term and provided ample guidance on what is required to meet it. As explained in the *Advanced Services Order* and *Directory Listing Order*, the FCC’s controlling interpretation of “intercommunication” has two components: subscribers must be able to “*make calls*,” and be able to make calls to an entire “community of interconnected customers” – *i.e.*, “*all subscribers within a geographic area*,” “*any other subscriber located on that network*.” *Supra*, Part I.A.

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<sup>18</sup> Arbitrators in Texas reached the same conclusion: “Intrado’s ‘hookflash’ capability merely extends or completes the original 9-1-1 call. This finding is consistent with the fact that Intrado’s 911/E911 service customers must obtain telephone exchange service from another LEC to make calls to non-9-1-1/emergency services customers of other LECs with which Intrado is interconnected either directly or indirectly.” Att. 10, *Texas Arbitrators’ Order* at 18-19.

The Commission recognized that Parts A and B of the definition of “telephone exchange service” require that the service provide “intercommunication.” Att. 1 (RAO) at 11. Nevertheless, the RAO claimed that the FCC’s discussion of that term was “unhelpful[ ],” and instead relied on Webster’s New World Dictionary’s definition of “intercommunication” to find that Intrado’s service met this requirement. *Id.* That finding is directly contrary to the interpretation set forth in the FCC’s *Advanced Services Order* and *Directory Listing Order*, which is the one the Commission was required to apply.

For example, the FCC has explained that an “intercommunicating” service is one that allows subscribers to “make calls to one another.” *Supra*, Part I.A; *Advanced Services Order*, ¶¶ 20, 23, 24, n.61; *Directory Listing Order*, ¶¶ 17, 21. The Commission, however, found that it was enough that the PSAP customer can *receive* a 911 call and thereafter “engage in two-way communications” with the 911 caller and another PSAP to which the incoming 911 call might be transferred. Att. 2 (Order) at 9-10; Att. 1 (RAO) at 13. That is not how the FCC views “intercommunication.” “Intercommunication” requires the capability to “make calls” – not just receive calls and communicate with others – and Intrado’s service does not allow the PSAP customer to make calls to anyone. *Supra*, Part I.B.

Furthermore, the FCC has explained that an “intercommunicating” service is one that permits an entire “*community of interconnected customers* to make calls to one another,” *i.e.*, to make calls to “*all subscribers within a geographic area.*” *Advanced Services Order*, ¶¶ 20, 23 (emphasis added). The Commission (Att. 1 (RAO) at 13), however, accepted the Ohio Commission’s assertion that because the 1996 Act itself “does not quantify intercommunication,” the concept can be “limited,” and therefore the “community of interconnected customers” can be the 911 caller and its designated connection to the Intrado-

served PSAP. But while the statute might not quantify “intercommunication,” the FCC did when it said that an “intercommunicating” service must enable the subscriber to make calls to “all subscribers” (*i.e.*, “any other subscriber”) on the network. *Advanced Services Order*, ¶¶ 20, 23-24, n.61; *Directory Listing Order*, ¶¶ 17, 21. The FCC also rejected the notion that intercommunication could be “limited” when it held that a designated connection between one or more specified points is not “intercommunication.” *Advanced Services Order*, ¶¶ 20, 23-26, n.61; *Directory Listing Order*, ¶¶ 17, 21-22.

For example, in the *Directory Listing Order* (¶¶ 17, 22), the FCC found that directory assistance (“DA”) call completion services (which permit the caller to complete a call to any requested number that is listed) meet the “intercommunicating” requirement, but that DA without call completion (which permits a connection only with the DA operator) does not. The distinction drawn between DA with call completion and DA without call completion shows that when the FCC said “that the call completion feature of some DA services allows ‘an interconnected community of customers to make calls to one another,’ it is plainly referring to call recipients other than the DA service itself (the functional equivalent of the PSAP in this analysis).” Att. 3, *Illinois Order*, 2009 WL 2589163, \*10. Indeed, “the ‘community of interconnected customers’ made accessible to the DA caller is dramatically different than the single transferee made accessible through Intrado’s 911 service.” *Id.* at \*9. “The interconnected community, for purposes of defining telephone exchange service, encompasses a more varied inter-customer communication than an inbound-only hub-and-spoke arrangement in which all calls must end with the hub PSAP (or another PSAP via call transfer).” *Id.* at \*11.

Similarly, in the *Advanced Services Order* (¶¶ 24-25), the FCC explained that xDSL services meet the definition of “telephone exchange service” because “a customer may rearrange

the service to communicate with *any other subscriber* located on that network,” but that private line services (*i.e.*, services “whereby facilities for communications between two or more designated points are set aside for the exclusive use or availability of a particular customer and authorized users during stated periods of time”) do not meet the definition because “customers subscribing to private line service . . . may communicate only between those specific, predetermined points set aside for that customer’s exclusive use.” (Emphasis added); *see also id.* ¶ 26 (“xDSL-based advanced service and private line service are distinguishable in that xDSL-based services permit intercommunication and private line services do not.”). Intrado’s 911 service to PSAPs – like private line service – allows the PSAPs to connect only with “specific, predetermined points” (*i.e.*, 911 callers, PSAPs, and first responders). It therefore does not provide subscribers with “intercommunication” and does not meet the definition of “telephone exchange service.”

Finally, even if the limited connection Intrado’s service might permit between three specific predetermined points (PSAPs, 911 callers, and first responders) *could* be enough to qualify as “intercommunicating,” under the FCC’s definition, Intrado’s PSAP customer must be able to *call all* members of that community. *Advanced Services Order*, ¶¶ 20, 23-24, n.61; *Directory Listing Order*, ¶¶ 17, 21. Intrado’s PSAP customer, however, cannot call anyone. In fact, even under Intrado’s and the Commission’s view, Intrado’s PSAP customers can only “call” other PSAPs via the hookflash capability; Intrado’s PSAP customer cannot call the other members of the “community of interconnected customers.” Moreover, Intrado’s PSAP customer can only connect to the other members of the community (including other PSAPs) if and when the 911 caller places a call to the PSAP using another carrier’s service. That does not meet the definition of “intercommunicating.”



### 3. Intrado's Service Fails to Meet the Exchange-Area Requirements<sup>19</sup>

The FCC made clear that a telephone exchange service must operate within, and must permit intercommunication among all subscribers within, a local exchange area or the equivalent of a local exchange area. *Advanced Services Order*, ¶¶ 15, 29; *Directory Listing Order*, ¶¶ 17, 19.

The RAO did not find, nor could it, that Intrado's service is provided within a local exchange area. Instead, the RAO (Att. 1 at 13) adopted the *Ohio Arbitration Award's* (at \*36) determination that Intrado's service does not have to coincide with the ILEC's local exchange area boundary, but can be some other geographical area. It may be true that the exchange area does not have to match the ILEC's, but that does not mean that any purported "geographical area" consisting of three designated points (the 911 caller, the PSAP, and the first responder) is sufficient to meet the requirements. Quite the contrary, the FCC made clear that a telephone exchange service must operate within, and must permit intercommunication among all subscribers within, a local exchange area *or the equivalent of a local exchange area*, and that a connection between designated points (a PSAP, 911 caller, and first responder) is *not* equivalent to a local exchange area. *Advanced Services Order*, ¶¶ 15, 25, 27, 29; *Directory Listing Order*, ¶¶ 17, 19, 22. Moreover, because Intrado's PSAP customer does not "communicate within the equivalent of an exchange area," any charge it pays for the service it receives is not an "exchange service charge." *Advanced Services Order*, ¶ 27.

The Commission also relied upon the Ohio Commission's speculation that the "PSAPs must have a service that takes into account the location of fire, police, and other emergency

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<sup>19</sup> Specifically, the requirements that the service be "within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area" and be "of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge." 47 U.S.C. § 153(47). These requirements apply under both parts of the definition of "telephone exchange service." *Advanced Services Order*, ¶ 30.

service providers within the county that it serves,” and therefore Intrado’s “service area is akin to a single exchange.” *Ohio Arbitration Award* at \*35; *Ohio Rtg. Order* at \*16-\*17. There is no evidence in the record to support that assumption. More importantly, even if those three points could be viewed as “akin” to a local exchange area, Intrado’s service does not permit everyone within that “exchange” to call everyone else in that “exchange” (as required under the FCC’s definition of “telephone exchange service,” *Advanced Services Order*, ¶¶ 20, 23-26; *Directory Listing Order*, ¶¶ 17, 21-22.) – e.g., fire emergency services cannot call police emergency services, 911 callers cannot call other 911 callers, PSAPs cannot call 911 callers, etc. Intrado’s service only permits a *connection* between the 911 caller, the PSAP, and the first responder *when the 911 caller initiates a call* to the PSAP using another carrier’s service. In fact, even under Intrado’s and the Commission’s view, Intrado’s PSAP customer can only “call” (via hookflash) other PSAPs; Intrado’s PSAP customer cannot call the 911 callers or emergency personnel using Intrado’s service. The service therefore does not operate with “the equivalent of a local exchange area.”

**4. Intrado’s Service Is Not Comparable to Any Service the FCC Has Held Meets the Definition of “Telephone Exchange Service”**

To meet part B of the FCC’s definition, a service must also be comparable to other telephone exchange services, *i.e.*, they must “retain [] key characteristics and qualities.” *Advanced Services Order*, ¶¶ 29-30; *Directory Listing Order*, ¶¶ 20-21. The Commission, however, did not compare Intrado’s service to any services meeting Part A or Part B of the definition. Even a cursory comparison shows that Intrado’s service bears no resemblance to other “telephone exchange services.”

Traditional circuit switched voice telephony meets part A of the definition. *Advanced Services Order*, ¶¶ 17, 19, 21; *Directory Listing Order*, ¶ 21. Intrado’s service plainly is not

comparable to traditional voice telephony because subscribers to that service can make calls to any other subscriber of their choosing in the exchange, while Intrado's service does not allow subscribers to make any calls. Instead, the PSAP customer can use Intrado's E911 service only to answer incoming 911 calls and to transfer those incoming 911 calls to another PSAP.

Moreover, the FCC held that DA with call completion meets parts A and B of the definition. *Directory Listing Order*, ¶ 16. The Commission (Att. 1 (RAO) at 13) repeatedly referred to the FCC's finding that DA with call completion meets the definition of "telephone exchange service" because it allows the subscriber to "make calls" and "originate . . . a telecommunications service." But the Commission neglected to make any comparison with Intrado's service, which does not allow the subscriber to make or originate any calls. The Illinois Commission, by contrast, made the comparison and correctly concluded that Intrado's service was not a "telephone exchange service" because it does not permit subscribers to make calls. Specifically, the Illinois Commission pointed out that while DA with call completion allows the caller to communicate with a large number of people of its choosing, Intrado's service permits only a transfer to a designated point. Att. 3, *Illinois Order*, 2009 WL 2589163, \*7-\*10. And while DA with call completion allows the origination of a new call to the end-user's selected destination without further involvement by the DA provider, Intrado's service allows only a call transfer to a single destination with continued involvement by the PSAP. *Id.*

Intrado's service also is not comparable to the xDSL-based services the FCC held meet the definition of "telephone exchange service." As the Illinois Commission explained, while the xDSL services allowed the subscriber to communicate with any other subscriber of its choosing without an additional line, Intrado's service does not permit the PSAP to make any calls and

allows for only a call transfer to a designated point. Att. 3, *Illinois Order*, 2009 WL 2589163, \*9-\*10.

**5. AT&T North Carolina's Tariff Does Not Label Its 911 Service As "Telephone Exchange Service" And, In Any Event, Is Irrelevant**

The RAO (Att. 1 at 13) notes that AT&T's witness indicated on cross-examination that AT&T North Carolina's own E911 tariff described its offering as "telephone communications service" and that Intrado argues that this classification is comparable, if not identical, to telephone exchange service.<sup>20</sup> That is wrong and irrelevant. AT&T North Carolina's tariff does not refer to its 911 service as "telephone exchange service." See Public Staff Exhibit Pellerin CX-1. It refers to the service as "telephone exchange communication service," because it is a communication service that is offered in an exchange. Att. 7 at 14. Nothing in the tariff asserts that the service meets Congress's definition of "telephone exchange service."

Moreover, even if AT&T North Carolina's tariff referred to its 911 service as "telephone exchange service" (which it did not), that would be of no consequence here. Whether a service qualifies as telephone exchange service is dependent on whether the characteristics of the service meet the 1996 Act's definition of "telephone exchange service." AT&T North Carolina's service is for "answering, transferring and dispatching" in response to 911 calls and is not used to originate calls. So even if AT&T North Carolina's tariff called the service "telephone exchange service" – which it did not – that would prompt nothing more than the conclusion that AT&T North Carolina's tariff inaccurately labeled AT&T North Carolina's emergency service. This error, even if it did exist,

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<sup>20</sup> It is noteworthy that Intrado views AT&T North Carolina as being bound by four words that appear in its tariff, even though Intrado would ignore the language of its own tariff, which makes clear that its service is not local exchange service and that its subscribers are *required* to subscribe to local exchange service with another carrier in order to obtain Intrado's service. See Att. 8, Florida Tariff § 2.1, Definition of Terms, (Local Exchange Service); *id.* §§ 5.1.4, 5.2.3, and 5.2.9.D.

would do absolutely nothing to change the requirements of the Act or the fact that Intrado's service fails to meet those requirements.

The RAO relies heavily on the erroneous conclusion that AT&T "has treated" its E911 service as "telephone exchange service" "at a point when AT&T was not anticipating this docket." A carrier must meet the definition of "telephone exchange service" in order to be eligible to compel interconnection under Section 251(c)(2). AT&T, as an ILEC, could never seek to compel interconnection under that Section. It therefore would have no reason to characterize its service as "telephone exchange service," and, in fact, did not characterize it as such, but rather called it a "telephone exchange communications service." In any event, the record is void of any evidence that AT&T sought or derived any benefit from purportedly characterizing its service as a telephone exchange service.

**6. The Definition of Telephone Exchange Service Must Be Read According To Its Plain Language As Interpreted By The FCC**

The RAO seeks to lower the standard for what qualifies as "telephone exchange service," claiming (Att. 1 at 12) that the "FCC has been expansive in its definition of telephone exchange services," citing paragraph 21 of the *Advanced Services Order*. However, the point the FCC was making in that paragraph (which is clear from the context) was that, while it had traditionally interpreted the telephone exchange definition to be a voice communication, the definition was not limited to voice communications. Rather, so long as the requirements of the definition are met, the term "telephone exchange service" encompasses voice and data services. That, however, does not mean the definition should be read expansively to include services, like Intrado's, that bear no resemblance whatsoever to other "telephone exchange services" and that fail to meet the most basic requirements of the definition. Quite the contrary, the FCC has emphasized that "telephone exchange services" must be "comparable," *i.e.*, they must "retain [ ]

key characteristics and qualities,” *Advanced Services Order*, ¶ 30; *see also id.*, ¶ 29; *Directory Listing Order*, ¶¶ 20-21 – including the requirements that the service permit “intercommunication” and allow subscribers to “originate” or “make calls” to “all subscribers within a geographic area.” *Advanced Services Order*, ¶¶ 20, 23, 24, 25, n.61; *Directory Listing Order*, ¶¶ 17, 21-22.<sup>21</sup> If a service does not meet these requirements – as is the case here with Intrado’s E911 service to PSAPs – it is not a “telephone exchange service,” and the carrier is not entitled to interconnection and arbitration of an interconnection agreement for the provision of that service.

The Commission suggests that the FCC supports an expansive interpretation of “telephone exchange service” because it has found that directory assistance with call completion and certain advanced xDSL services meets the definition. The fact that the FCC found that certain services meet the definition of “telephone exchange service” does not mean that the definition should be read expansively. It just means that those services satisfied the elements of the definition. And the FCC made clear, including in the paragraphs of the *Directory Listing Order* quoted by the Commission, that the services in question met the definition of “telephone exchange service” because they allowed subscribers to “originate” or “make calls.” *Directory Listing Order*, ¶ 17 (“the call-completion service offered by many competing DA providers constitutes intercommunication because it permits a community of interconnected customers to *make calls* to one another in the manner prescribed by the statute.”) (emphasis added); *id.*, ¶ 20 (call completion meets the definition because it allows the “calling party the ability ‘through the system of switches, transmission equipment, or other facilities (or combination thereof)’ to

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<sup>21</sup> Even the RAO (at 11) acknowledges that all “telephone exchange services” must permit “intercommunication.”

*originate* and terminate a telecommunications service.”) (emphasis added). Making calls is something Intrado’s PSAP customers cannot do with Intrado’s E911 service.

### **CONCLUSION**

For the reasons stated herein, the Court should grant judgment in favor of AT&T and, therefore, the entire Commission decision must be vacated.

This 26<sup>th</sup> day of April, 2010.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **AT&T NORTH CAROLINA'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** using the CM/ECF system, which will send notification of the filing to all counsel of record who are registered on the CM/ECF system.

This 26<sup>th</sup> day of April, 2010.

/s/ Eric H. Cottrell  
Eric H. Cottrell